WILTSHIRE & GRANNIS LLP

April 15, 2011

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109

Dear Ms. Dortch:

The FCC has asked eligible telecommunications carriers ("ETCs") to develop a proposal that the Commission could adopt in an interim order, under the "good cause" exception to notice and comment informal rulemaking procedures, to reduce the number of individual qualified Lifeline subscribers that are simultaneously receiving Lifeline-supported service from multiple ETCs. As set forth in the attached Interim Lifeline Duplicate Resolution Process proposal (the "Proposal") and below, an interim order should establish a rule precluding any individual qualifying for low income consumer benefits from simultaneously receiving more than one Lifeline supported service; provide a mechanism, to be applied on an interim basis in selected states, for de-enrolling an individual consumer who is simultaneously receiving Lifeline supported service from more than one ETC; and collect additional information regarding instances in which multiple residents of a single postal address may be receiving Lifeline supported services. These interim rules and procedures would be put in place pending adoption of final rules in response to the FCC's *Lifeline and Linkup Reform and Modernization NPRM*.[1] The Proposal is designed to be implemented while the Commission considers the issues in Sections IV, V.A, and VII.B & D of the *NPRM*, reply comments on which are due on an accelerated basis on May 10, 2011. The Proposal is designed to remain in effect for a limited period of approximately six months while the FCC and/or USAC procure the capabilities to operate a more permanent duplicate enrollment resolution process, and the specific identification process described more fully in the Proposal would sunset after six months unless specifically reinstated by the Commission in an order resulting from the pending rulemaking.

The undersigned ETCs and associations have worked cooperatively with each other and with Commission staff to develop the Proposal. The process envisioned by the Proposal would, however, seek only voluntary participation by ETCs, and neither submission of this letter nor the Proposal itself should indicate that any individual ETC has either agreed to participate in the process ultimately adopted by the Commission or, at this time, to fund a third-party vendor to

[1] *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (rel. Mar. 4, 2011).

conduct some of the functions in the Proposal or for a period beyond the six months of this proposal. For some ETCs, any such funding will depend on the cost of the vendor and the allocation of those costs among ETCs.

The Proposal is designed to reduce the number of individual qualified Lifeline subscribers who are simultaneously receiving Lifeline-supported service from multiple ETCs, while still providing low-income consumers with the opportunity to choose their provider of Lifeline-supported service. The Proposal also recognizes, however, that ETCs that have customers who are simultaneously receiving Lifeline services from multiple ETCs today have no means of verifying whether any Lifeline customer is already receiving Lifeline service from another ETC. These ETCs are complying with the Commission's rules and mandates when they provide Lifeline service in good faith (based on the information available to the ETC at the time it received the request for service) to an individual who demonstrates that he / she qualifies for Lifeline support in accordance with existing rules. Under the Proposal, ETCs would therefore continue to be reimbursed for any Lifeline benefits provided to qualifying low income consumers until directed by USAC to de-enroll such customers, and would not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Furthermore, until there is a centralized database or other mechanism for real-time certification and verification of low-income subscribers' eligibility for enrollment in an ETC's Lifeline program, ETCs that in the future provide service to a qualifying low income consumer that is also receiving Lifeline service from another ETC will also receive reimbursement for any Lifeline benefits provided to that consumer until directed by USAC to de-enroll the customer, and will not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Any other approach would effectively deny Lifeline consumers the ability to port services among Lifeline providers and would penalize ETCs for providing services that they were required to provide based on current requirements and regulations.

In light of the particular facts before the Commission and the fact that no consumer will lose all Lifeline service as a result of this interim proposal, the ETCs identified below recognize that that it may be appropriate for the Commission to adopt the attached Proposed Rules—and move forward with the related procedures discussed in the Proposal—under the "good cause" exception to the Administrative Procedure Act's typical notice and comment procedures,[2] and would not object to the Commission doing so.

The Proposal would impose new duties that have the force of law and that modify existing legislative rules, and therefore must be adopted through legislative rulemaking.[3] Most notably, notwithstanding rule 54.405(a), a legislative rule which directs all ETCs to make Lifeline service available to qualifying low-income consumers, the Proposal would both modify rule 54.405 to establish that ETCs have no obligation to provide Lifeline to low-income

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[2] 5 U.S.C. § 553(b)(3)(B).

[3] *Chao v. Rothermel,* 327 F.3d 223, 227 (3d Cir. 2003); *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

consumers simultaneously receiving Lifeline service from another ETC – and thus consumers can have no expectation of entitlement to duplicate services – and add a new rule 54.405(e) to require ETCs to de-enroll specified consumers from the Lifeline program at USAC's direction. The Proposal would also have USAC notify Lifeline customers of potential de-enrollment from one of the subscriber's Lifeline supported services, rather than the carrier as required by legislative rule 54.405(c), and leads to de-enrollment from one of the Lifeline supported services within less than 60 days from the date of the USAC letter and notwithstanding any other provisions of federal or state law or provisions of tariffs, both contrary to legislative rule 54.405(d). The Commission can place these new, substantive obligations on providers and low income consumers only by adopting on an interim basis the proposed rules attached to the Proposal as Appendix A.

Critically, as discussed above, the Commission's Order and rules must acknowledge that until the Commission adopts permanent Lifeline reforms ETCs will have no means to prevent duplicates from continuing or recurring and cannot, therefore, be expected to do so. In addition, the Commission's Order and rules must make clear that the Order does not at this time create any new requirement for any ETC to modify existing Lifeline enrollment and verification procedures. ETCs may be required to make process and systems changes as part of permanent Lifeline reform being considered in the NPRM. However, the Commission should not expect or require ETCs to make resource-intensive changes on an interim basis and then to have to do so again when permanent rules are adopted, particularly since ETCs currently have no means of verifying whether a customer is already receiving Lifeline service from another ETC.

To implement the Proposal, in addition to directing USAC to take the steps detailed in the Proposal, the Commission should amend its Lifeline rules to state that Lifeline customers receiving duplicative Lifeline support resulting from individual consumers enrolling in multiple Lifeline programs are only entitled to a single Lifeline benefit. Specifically, the Commission should adopt the proposed rules attached to the Proposal as Appendix A.

The Proposed Rules would:

Amend rule 54.405(a) to provide that ETCs are obligated to provide Lifeline service only to qualifying low-income consumers who are not simultaneously receiving Lifeline service from that or any other ETC.

Amend rule 54.405 by adopting a new subsection (e) mandating the immediate de-enrollment of subscribers receiving duplicate benefits.[4]

In addition, the Commission must take a series of related steps to ensure that ETCs may de-enroll duplicate subscribers as contemplated by the Proposal.

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[4] Alternatively, the Commission could, by rule or order, waive or exclude from applicability Sections 54.405 (c) and (d) of its rules to permit carriers to immediately de-enroll subscribers.

First, the Commission must preempt any state or local requirements[5] or state-approved tariff requirements that conflict with the obligation under newly adopted rule 54.405(e) to immediately de-enroll duplicate subscribers.

Second, the Commission must expressly permit Lifeline providers either to (a) terminate service or (b) change a customer to another service tier immediately upon notice from USAC of de-enrollment. The Commission's Order must make it clear that ETCs may take these steps notwithstanding any arguably contrary service terms and conditions (applicable by tariff or otherwise) or federal, state or local legal or regulatory requirements.

Third, to permit Lifeline providers to move customers to a rate or service plan that does not reflect a Lifeline benefit and to streamline the interactive voice response ("IVR") process through which Lifeline subscribers would indicate their intent to retain Lifeline service from a different ETC than the one identified in USAC's letter to the consumer, Lifeline providers must be granted a blanket waiver of the slamming and cramming rules to the extent such rules are applicable.

Fourth, the Commission's Order must make clear that any customer found to be receiving duplicate benefits from a state Universal Service or Lifeline fund must be de-enrolled from both the federal and the state program upon receipt by the provider of a de-enrollment notice from USAC.

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[5] *See, e.g.,* Fla. Admin. Code r. 25-4.0665(14) ("An eligible telecommunications carrier must provide 60 days written notice prior to the termination of Lifeline service."); Wisc. Admin. Code ATCP 123.04 (with limited exceptions, "no provider may initiate any price increase or other subscription change without giving the consumer prior notice of that price increase or subscription change. The provider shall give the notice at least 25 days, but not more than 90 days, prior to the subscription change.").

Finally, the Commission's Order should note that production of information necessary to identify and de-enroll recipients of duplicate Lifeline benefits is consistent with Section 222(d) of the Communications Act.

Respectfully submitted,

United States Telecom Association	CTIA – The Wireless Association ®
AT&T	CenturyLink
Cox Communications, Inc.	General Communication, Inc.
Nexus Communications, Inc.	Sprint Nextel Corp.
Tracfone Wireless, Inc.	Verizon Communications, Inc.

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